

**REMARKS**

Reconsideration and allowance of the subject application are respectfully requested. By this Amendment, claims 1 and 8-10 have been amended to include the subject matter of dependent claim 5, and dependent claim 5 has been canceled. Accordingly, there are no new issues that arise from this Amendment that require further search, since the subject matter of dependent claim 5 has already been considered.

Claims 1-4 and 6-10 are all the claims pending in the application. Applicant respectfully submits that the pending claims define patentable subject matter.

**Claim Rejections – 35 U.S.C. § 102**

Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Hamabe et al. (European Publication Number EP 1 237 296 A2), hereinafter Hamabe et al. Applicant respectfully traverses the 35 U.S.C. § 102 rejection of the claims, as set forth below.

The following remarks are for independent claim 1 but apply by analogy to independent claims 8-10.

Amended claim 1:

A method of transmitting data over first and second channels, the first channels having a predefined grade of service and the second channels having a variable grade of service, the method comprising:

determining an actual load of a transmit power amplifier,

determining a share of the load which is due to the transmission over the second channels,

determining a share of the load which is due to the transmission over the first channels by subtracting the share of the load which is due to the transmission over the second channels from the actual load of the transmit power amplifier,

determining a difference between a maximum load and the share of the load which is due to the transmission over the first channels, and

controlling the transmission over the second channels on the basis of the difference.

Hamabe states that the “transmission power control device is characterized in that it maintains a sum of transmission powers for the shared channel, and for the individual channels at the constant power, and sets the transmission power for shared channel to the constant power when there exists no individual channel. The transmission power control device is characterized in that it respectively increases/decreases the transmission power for shared channel [*alleged second channels*] according to an increased/decreased transmission power because of an increase/decrease of the individual channels [*alleged first channels*], and respectively increases/decreases the transmission power for shared channel by an average transmission power of the individual channels for an increase/decrease of one individual channel.” paragraph [0021]

Hamabe fails to teach or suggest determining a share of the load which is due to the transmission over the first channels by subtracting the share of the load which is due to the transmission over the second channels from the actual load of the transmit power amplifier, as recited in claim 1.

In Hamabe, the transmission power of the second channels increases or decreases when the transmission power of the first channels increases or decreases. Consequently, since the transmission power of the second channels is directly dependent on the transmission power of

the first channels, Hamabe would not (and does not) teach or suggest that the share of the load due to the transmission over the first channels is determined by subtracting the share of the load which is due to the transmission over the second channels from the actual load of the transmit power amplifier.

For at least the foregoing reasons, claim 1 is not anticipated or rendered obvious by the teaching of Hamabe. Similarly, claims 8-10 are patentable over Hamabe for at least analogous reasons as discussed above. Therefore, the 35 U.S.C. § 102 rejection of claims 1-4 and 6-10 should be withdrawn.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

AMENDMENT UNDER 37 C.F.R. § 1.116  
U.S. Application No.: 10/781,627

Attorney Docket No. Q79775

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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